

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL B. BECHTOL,

Plaintiff,

v.

MARSH & MCLENNAN COMPANIES, INC.,

Defendant.

Case No. C07-1246MJP

ORDER GRANTING
PLAINTIFF'S MOTION TO
DEEM ADMINISTRATIVE
REMEDIES EXHAUSTED AND
GRANTING IN PART AND
DENYING IN PART
DEFENDANT'S MOTION TO
DISMISS

This matter comes before the Court on two motions filed by the parties: Plaintiff's motion to deem administrative remedies exhausted (Dkt. No. 18), and Defendant's Motion to Dismiss (Dkt. No. 28). Both motions have been fully briefed with a response and a reply. Having considered the pleadings and all papers submitted in support thereof, the Court GRANTS Plaintiff's motion and DENIES in part and GRANTS in part Defendant's motion to dismiss. Plaintiff's state law claims of breach of contract and duty of good faith and fair dealing and Plaintiff's ERISA claim of failure to properly fund the Sedgwick Plan are dismissed for failure to state a claim upon which relief can be granted. The remaining ERISA claim will proceed in this action. The Court's reasoning is set forth below.

Background

Plaintiff Michael Bechtol was employed with Sedgwick Re., Inc. ("Sedgwick") as a reinsurance executive when Sedgwick implemented the Sedgwick Re, Inc. Death and Retirement Benefit Plan ("SERP" or the "Plan"), a "top-hat" benefits retirement plan for eight Sedgwick employees. The Plan is governed by ERISA. In 1998, Marsh & McLennan Companies, Inc. ("MMC") acquired Sedgwick and took over administration of the Plan.

1 On June 30, 2002, Mr. Bechtol ended his employment with MMC for health reasons. Mr.
2 Bechtol later applied to MMC for long-term disability benefits after he was diagnosed with
3 Parkinson's disease. His claim was denied and, after an unsuccessful attempt at appealing that
4 decision, Mr. Bechtol brought suit in federal court. The parties settled that action on June 23,
5 2006.

6 As part of the settlement agreement, MMC agreed to provide Mr. Bechtol with a
7 description of his other benefits, including benefits under the SERP Plan. MMC informed Bechtol
8 that it would pay \$30,000 per year under the contract if Mr. Bechtol made an "early retirement"
9 election for benefits at age 55. Mr. Bechtol turns 55 on November 1, 2008. The \$30,000 figure
10 is substantially less than the estimated amount of benefits communicated to Mr. Bechtol at the
11 time he signed the Plan contract and over the course of his employment. Mr. Bechtol brought this
12 ERISA action challenging the calculation of SERP benefits he will receive upon early retirement.

13 Discussion

14 Plaintiff has brought a motion to deem administrative remedies exhausted which the Court
15 construes as a motion for partial summary judgment. (Dkt. No. 18.) Summary judgment is
16 proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together
17 with the affidavits, if any, show that there is no genuine issue as to any material fact and that the
18 moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

19 Defendant's motion is a motion to dismiss for failure to state a claim upon which relief can
20 be granted. Fed. R. Civ. P. 12(b)(6). Dismissal under Federal Rule of Civil Procedure 12(b)(6) is
21 warranted only if "it appears beyond doubt that plaintiff can prove no set of facts in support of his
22 claim which would entitle him to relief." Van Buskirk v. Cable News Network, Inc., 284 F.3d
23 977, 980 (9th Cir. 2002). All allegations of material fact are construed in a light most favorable
24 to the plaintiff. Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1527 (9th Cir. 1995).

1 **I. Exhaustion of Administrative Remedies**

2 Before the substance of an ERISA benefits claim can be heard in federal court, judicial
3 doctrine requires that the plaintiff first exhaust the administrative claims procedure established by
4 the employer. Chappel v. Laboratory Corp. of America, 232 F.3d 719, 724 (9th Cir. 2000);
5 Amato v. Bernard, 618 F.2d 559, 567-68 (9th Cir. 1980). This exhaustion requirement “serves
6 several important policy considerations, including the reduction of frivolous litigation, the
7 promotion of consistent treatment of claims, the provision of a nonadversarial method of claims
8 settlement, the minimization of costs of claim settlement and a proper reliance on administrative
9 expertise.” Diaz v. United Agricultural Employee Welfare Benefit Plan and Trust, 50 F.3d 1479,
10 1483 (9th Cir. 1995).

11 In deciding whether Mr. Bechtol has exhausted the claims procedure, the Court must
12 consider the following: (1) whether Mr. Bechtol exhausted the remedies available to him by
13 following the Plan’s claims procedure; and (2) if he did not exhaust the claims procedure, whether
14 Mr. Bechtol is excused from following that procedure because it does not comply with federal
15 regulations or because attempts to follow the procedure would be futile. The Plan’s claims
16 procedure is found in Paragraph 10 of the contract and has four steps.

17 The first step requires that any claim for benefits must be made in writing to the Plan
18 Fiduciary. While the Plan identifies Ima Barnes as the Plan Fiduciary, it also states that “The
19 Corporation will notify you in writing of any change in the Plan Fiduciary or change in address of
20 the Plan Fiduciary.” On December 15, 2000, Mr. Bechtol was notified that MMC had acquired
21 Sedgwick and that the MMC Corporate Benefits department would be assuming governance of
22 the Plan. (Michael Paul Zoppo letter, Birk Decl. Ex. P.) On December 15, 2006, Mr. Bechtol
23 sent a letter to Steve Pennacchio of MMC Corporate Benefits expressing an intent to elect the
24 SERP benefits at age 55. This letter accords with the Plan’s requirements for submitting a claim
25 and Mr. Bechtol has satisfied step one of the Plan’s claims procedure.

26 Step two requires that the Plan Fiduciary must provide written notice of any claim denials
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1 within 90 days of receiving the claim. Mr. Pennacchio's letter to Mr. Bechtol dated January 17,
2 2007 constitutes an adverse decision on the claim. Mr. Bechtol has proceeded through step two
3 of the claims procedure.

4 Step three states that Mr. Bechtol may appeal to the Board of Directors of Sedgwick for
5 review of an adverse decision on a claim. This step is obsolete because the Board of Directors of
6 Sedgwick was taken over by the MMC Board of Directors after the merger. However, as
7 discussed above, Mr. Bechtol clearly had notice that the MMC benefits department had taken
8 over the administration of SERP. He was likely on notice, then, that any appeal of a benefits
9 decision should be made to the Board of Directors of MMC. Mr. Bechtol failed to submit a
10 request for review or to pursue information about the review process. After receiving the letter
11 from Mr. Pennacchio, Mr. Bechtol made no further inquiries about his SERP benefits but instead
12 filed this action on August 10, 2007.

13 Although Mr. Bechtol has not exhausted the administrative remedies provided by the Plan,
14 the Court finds that he is deemed to have exhausted those remedies because MMC did not comply
15 with federal regulations when processing Mr. Bechtol's claim. The regulations implementing
16 ERISA establish minimum requirements for employee benefit plan procedures pertaining to
17 beneficiary claims. 29 CFR § 2650.503-1. The regulations also state that:

18 in the case of the failure of a plan to establish or follow claims procedures
19 consistent with the requirements of this section, a claimant shall be deemed to
20 have exhausted the administrative remedies available under the plan and shall
21 be entitled to pursue any available remedies under section 502(a) of the Act
22 on the basis that the plan has failed to provide a reasonable claims procedure
23 that would yield a decision on the merits of the claim.

24 29 CFR § 2650.503-1(l).

25 29 CFR § 2650.503-1(g) requires that an adverse decision on a benefits claim must
26 include: (1) the specific reason for the determination; (2) reference to the specific plan provisions
27 on which the determination is based; (3) a description of any additional material necessary for
claimant to perfect the claim; and (4) a description of the plan's review procedures and the time
limits applicable to such procedures, including a statement of the claimant's right to bring a civil

1 action under section 502(a) of the Act following an adverse benefit determination on review. 29
2 CFR § 2650.503-1(g). Mr. Pennacchio's January 17, 2007 letter included (1) and (2) and (3) is
3 not applicable. However, Mr. Pennacchio failed to describe the procedure for review and the
4 applicable time limit and also failed to notify Mr. Bechtol of his right to bring an ERISA action.

5 The case law applying the "deemed exhausted" clause (29 CFR § 2650.503-1(l)) has
6 primarily concerned situations where an employer failed to act on a benefits claim within the time
7 limits set by the regulations. See Kowalski v. Farella, Braun & Martel, LLP, 2007 U.S. Dist.
8 LEXIS 37317 (N.D. Ca. May 7, 2007); Neathery v. Chevron Texaco Corp. Group Accident
9 Policy No. OK 826458, 2006 U.S. Dist. LEXIS 95686 (S.D. Cal. Feb. 14, 2006); Fleming v.
10 Kemper Nat'l Svcs., Inc., 2004 U.S. Dist. LEXIS 28378 *16-15 (N.D. Cal. Mar. 2, 2004). MMC
11 acted on Mr. Bechtol's claim in a timely manner but failed to comply with the regulations by
12 omitting a description of the review procedure from the adverse decision letter. The Department
13 of Labor has indicated that such an omission is sufficient basis for finding that the administrative
14 remedies have been exhausted and allowing a claimant to proceed to court. See Department of
15 Labor, "Frequently Asked Questions," http://www.dol.gov/ebsa/faqs/faq_claims_proc_reg.html
16 (last visited January 28, 2008) ("[N]ot every deviation by a plan from the requirements of the
17 regulation justifies proceeding directly to court. ... [However,] deviations not susceptible to
18 meaningful correction through plan procedures, such as the failure to include a description of the
19 plan's review procedures in a notice of an adverse benefit determination, would justify a court
20 determination that the plan failed to provide a reasonable procedure.").

21 By failing to inform Mr. Bechtol of the review procedure and of his right to bring a civil
22 action, Mr. Pennacchio's letter effectively denied Mr. Bechtol "access to the administrative review
23 process mandated by [ERISA]." 65 Fed. Reg. 70255-56 (Nov. 21, 2000). Language in the letter
24 encouraging Mr. Bechtol to contact Mr. Pennacchio with any questions does not fulfill the
25 purpose of the regulations. Because MMC's actions on the claim do not comply with federal
26 regulations, Mr. Bechtol is deemed to have exhausted the administrative remedies and his ERISA
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Marsha J. Pechman

U.S. District Judge

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